

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
GENUITY SOLUTIONS, INC.)	File Nos. 0001142864, 0001142865
)	
Request for Waiver and Extension of the)	
Filing Deadline for Private Microwave)	
Industrial/Business Pool Construction)	
Certification pursuant to Sections 1.925 and)	
101.23 of the Commission's Rules, as Amended)	

ORDER

Adopted: January 28, 2003

Released: January 29, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request for waiver of Section 101.63 of the Commission's Rules, 47 C.F.R. § 101.63, to extend the deadline for certification of construction of Stations WPRW437 and WPRW438, Middlesex, Cambridge, MA (the Stations). The Stations are Microwave Industrial/Business Pool facilities currently operated by Genuity Solutions, Inc., Debtor-in-Possession (Solutions).¹ Solutions states that it timely constructed the Stations' facilities in full compliance with the Commission's Rules. It further states that due to "significant personnel changes" at the time the facilities were constructed, it failed to notify the Commission of their construction in a timely manner; therefore, Solutions seeks a waiver to cure its omission of filing the requisite certification.² For the following reasons, we conclude that a grant of the Waiver Request is warranted under the circumstances presented.

II. BACKGROUND

2. Solutions is a Massachusetts corporation and wholly owned subsidiary of Genuity, Inc. (Genuity), which is a Delaware corporation headquartered in Woburn, Massachusetts.³ Genuity provides enterprise networking services, combining its Tier I network with a full portfolio of managed Internet services. On November 27, 2002, Genuity, certain Genuity subsidiaries, Level 3 Communications, Inc.,

¹ Genuity Solutions, Inc. Request for Waiver (filed January 3, 2003) (*Waiver Request*). Solutions filed two identical requests for waiver under FCC File Nos. 0001142864, 0001142865, respectively. Because the requests for waiver identify station call signs WPRW437 and WPRW438, we consider both requests collectively in this order.

² *Id.* at 1.

³ *Id.* at 2.

and Level 3 Communications, LLC ("Level 3") entered into an Asset Purchase Agreement, whereby Level 3 agreed to acquire substantially all of Solutions' assets and operations, including the Stations.⁴ Also, on November 27, 2002, to facilitate the transaction, Genuity and Solutions (along with certain other Genuity subsidiaries) filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code and entered debtor-in-possession status.⁵ Subsequently, on December 16, 2002, the parties sought Commission consent to assign the Stations' licenses from Solutions to Level 3.⁶ That application is pending before the Commission. The Commission granted the licenses subject to the Waiver Request to Solutions on February 28, 2001.⁷ Solutions contends that the Stations' facilities were constructed and made operational in September 2001.⁸ Solutions further contends that it uses the Stations' solely for internal business purposes.⁹

III. DISCUSSION

3. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰ For the reasons set forth below, we conclude that grant of the requested waiver is warranted under the circumstances presented herein.

4. As an initial matter, we note that Solution's request for waiver of Section 101.63 of the Commission's Rules is misplaced. The licenses for Stations WPRW437 and WPRW438 were granted to Solutions on February 28, 2001,¹¹ and subsequently placed into operation in September 2001.¹² Under Section 101.63 of our Rules, stations must be in operation within eighteen months from the initial date of grant.¹³ This 18-month period between the date of grant of an authorization and the date of required

⁴ See Level 3 Communications Website, News Releases, *Level 3 to Acquire Genuity Assets and Operations*, available at <<http://www.level3.com/press/3053.html>> (released Nov. 27, 2002); Genuity Website, News Center, *Genuity to be Acquired by Level 3*, available at <http://www.genuity.com/announcements/news/press_release_20021127-01.xml> (released Nov. 27, 2002).

⁵ See FCC Public Notice, *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action*, Rep. No. 1369 (Dec. 18, 2002); ULS Application No. 0001105064.

⁶ See Public Notice, *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Accepted for Filing*, Rep. No. 1374 (Dec. 26, 2002); FCC File No. 0001124164.

⁷ See Public Notice, *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action*, Rep. No. 795 (Mar. 7, 2001); FCC File Nos. 0000314312 and 0000314383.

⁸ See *Waiver Request*, Exhibit B (Declaration of Philip G. Baker).

⁹ *Waiver Request* at 2.

¹⁰ 47 C.F.R. § 1.925(b)(3).

¹¹ See *supra* note 7.

¹² See *Waiver Request*, Exhibit B (Declaration of Philip G. Baker).

¹³ See 47 C.F.R. § 101.63(a).

commencement of service or operations is referred to as the construction period.¹⁴ Because Solutions commenced operations in September 2001, well within its construction period, the matter at issue in Solutions' Waiver Request is not the timeliness of construction under Section 101.63, but rather, the timeliness of Solutions' notification to the Commission pursuant to Section 1.946(d) of our Rules.¹⁵

5. In support of its Waiver Request, Solutions submits the declaration of Philip G. Baker, Project Engineer of Solutions, certifying that Stations WPRW437 and WPRW438 were in fact placed into operation in September 2001.¹⁶ Notwithstanding the timely operation of these licenses within the 18-month construction period, Solutions states that its notification to the Commission "was delayed by a significant personnel turnover during the relevant time period."¹⁷ Based on our review of the information before us, we conclude that grant of the Waiver Request and acceptance of the late-filed notification of construction for these licenses is warranted.¹⁸

IV. CONCLUSION

6. In consideration of these circumstances, and given that the licenses were in fact timely placed into operation within the relevant construction period, as supported by the Declaration of Philip G. Baker, we are persuaded that a grant of the Waiver Request will be consistent with the public interest and the Commission's goals to promote efficient utilization of the spectrum.¹⁹

¹⁴ See 47 C.F.R. § 1.946(a).

¹⁵ See 47 C.F.R. § 1.947(d) which requires a licensee who commences service or operations to notify the Commission within fifteen days of the expiration of the applicable construction or coverage period. Because the facts and circumstances of the Waiver Request make it clear that the applicable rule subject to waiver is 47 C.F.R. § 1.946(d), we determine that omission of a specific reference to this rule should not bear on our consideration of the merits of the Waiver Request.

¹⁶ See *Waiver Request*, Exhibit B (Declaration of Philip G. Baker).

¹⁷ *Waiver Request* at 3.

¹⁸ We nonetheless note that our determination here is without prejudice to any enforcement action for failure to file the notification within the specified time period.

¹⁹ We also find it significant to our determination that, Solutions made a good faith commitment to implement internal safeguards and other measures to ensure that responsible personnel are aware of Commission requirements for private radio operators, and specifically, their construction certification obligations regarding future licenses. See *Waiver Request* at 4.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925, 1.946(d), and 101.63 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.946(d), 101.63, the Request for Waiver filed by Solutions on January 3, 2003, IS GRANTED, and the applications designated by FCC File Nos. 0001142864 and 0001142865 ARE HEREBY REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order*.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau